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# Ngeow Voon Yean v Sungei Wang Plaza Sdn Bhd/ Landmarks Holding Bhd

B FEDERAL COURT (PUTRAJAYA) — CIVIL APPEAL NO 04–1 OF 2004(W)
ABDUL MALEK AHMAD PCA, SITI NORMA YAAKOB AND ALAUDDIN FCJJ
4 JULY 2006

C *Labour Law — Employment — Dismissal — Employee admitted to acts of negligence or misconduct — Defence that employee was carrying out lawful orders of his superior — Nature and scope of such defence — Nature and scope of the doctrine of superior orders*

D *Labour Law — Employment — Employees — Duty of obedience — Whether confined to lawful and reasonable orders of employer — Nature and scope of — Lawful and reasonable orders of employer, how ascertained*

E *Labour Law — Employment — Employees — Duty of obedience — Approach employee should take when doubtful whether employer's order legal*

*Labour Law — Employment — Employees — Doctrine of superior orders — Whether position in Malaysia different from position at common law*

F

*Labour Law — Employment — Employees — Doctrine of superior orders — Whether concept of an order being manifestly wrong has any part in the doctrine of superior orders*

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The appellant was the General Manager of the respondent company. The respondent company had negotiated the sale of three business-premise units to one Sa-Mula Jadi Sdn Bhd ('Samula'). Two sale and purchase agreements ('SPA') were executed in respect of those three units. The SPAs were executed on behalf of the respondent by
H the appellant. The SPAs acknowledged inter alia that the 10% deposits had been paid by Samula to the respondent. Samula thereafter assigned all its rights and interests in both SPAs to two financial institutions. This was done through two deeds of assignment. The acknowledgment and consent of the respondent was obtained through the appellant's endorsements. The endorsements confirmed inter alia that
I the purchase price for the three units had been paid in full. The appellant was later hauled up before a domestic enquiry to answer to two charges of gross negligence. The gross negligence related to misrepresentations in the two deeds of assignment which stated that the price for all the three units had been fully paid when in fact that was not so. The appellant admitted to the acts of negligence but contended that he was merely carrying out the lawful orders of his superior, one Simon Chong

('Chong'), the respondent's Executive Director. The appellant contended that he had endorsed and signed the two deeds of assignment on the instructions of Chong, who had assured him that everything was in order and that he, Chong, would take the responsibility of collecting the purchase price of the properties sold. In fact even before he signed the first sale and purchase agreement, the appellant had inquired about the payment of the 10% deposit and he was assured by Chong that he, Chong, would issue him with a comfort note to allay his fears. That comfort note was only prepared by Chong at the time of the execution of the second sale and purchase agreement. The appellant however was found guilty of both charges and dismissed from the respondent's employment. The appellant commenced an action in the Industrial Court which ruled in his favour and held his dismissal to be without just cause or excuse. The respondent had the award quashed in the High Court, which decision was upheld by the Court of Appeal. The appellant obtained leave to appeal to the Federal Court.

**Held**, allowing the appeal with costs:

(1) In this case, the guilty knowledge had to be present not at the time when the sale and purchase agreements were executed but at the time when the deeds were endorsed as the charges against the appellant related to the two deeds (see para 24). However, when reviewing the evidence of the appellant's state of mind at the relevant times, the High Court appeared to have misread the facts and confused the events by concluding that when he executed the two deeds of assignment, the appellant 'knew that he was doing wrong' (see para 25). Since the facts alluded to by the High Court were not present at the time of the endorsements but nevertheless associated with the two deeds, the High Court reached a conclusion which resulted in the findings of the Industrial Court being set aside (see para 28).

(2) The Court of Appeal in accepting the conclusion of the High Court made the same error as the High Court. The Court of Appeal alluded to findings based on facts that happened prior to the endorsements of the deeds of assignment to conclude that the appellant had the guilty knowledge at the time the two deeds were endorsed (see para 29).

(3) In Malaysia, the general rule governing the doctrine of superior orders is nothing more than the duty of obedience that is expected of an employee. The most fundamental implied duty of an employee is to obey his employer's orders (see para 31); *Laws v London Chronicle (Indicator Newspapers) Ltd* [1959] 2 All ER 285 followed.

(4) The employee's duty to comply is confined to all the lawful and reasonable orders of his employer in respect of the performance of such functions that falls within the scope of his contract of employment. Whether the employer's orders are lawful and reasonable would depend very much on the terms and conditions of the contract and the character of employment. The employer cannot give an order outside the proper scope of the employment (see para 32).

(5) The duty of obedience is confined to compliance with the lawful and reasonable orders of an employer and as such the concept of an order being

manifestly wrong has no part in the doctrine of superior orders. In the instant case, the Court of Appeal erred when it made an exception to the general rule on superior orders when stating that an employee is entitled to disobey the orders of his superior if he, the employee is aware that that such orders are manifestly wrong. That exception holds good in military or criminal law (see para 36).

(6) The duty of an employee at common law is also similar in that he is to comply with all lawful and reasonable orders given by his employer with respect to the performance of such functions within the scope of his employment. That duty is one of the fundamental obligations which are deemed to be impliedly undertaken in every contract of hiring. The duty of obedience at common law is subject to two qualifications, firstly that the employer may not order his employee to do something illegal or secondly order his employee to do anything dangerous (see para 37).

(7) Where an employee is required to obey an order and he is doubtful whether the order is legal or not, the proper course is for the employee to obey the order first and to challenge its legality in separate proceedings. This distinction is made on the basis that if the law allows the employee to disobey any order he thinks is not legal, it would be impossible for the management to maintain discipline and industrial peace. On the other hand, if the employee takes upon himself to disobey the order which he thinks to be unlawful and unreasonable two courses are open to him. He can point out his difficulties, if any, to the superior and if the latter insists on the order being carried out, he can do the work and take the matter further in proceedings against his employer or to complain to his union. If he disobeys, he must take the risk if the court finds the order to be lawful and reasonable (see para 38).

**[Bahasa Malaysia summary**

Perayu merupakan Pengurus Besar syarikat responden. Syariket responden telah membuat perundingan jualan tiga unit premis perniagaan kepada Sa-Mula Jadi Sdn Bhd ('Samula'). Dua perjanjian jualbeli ('PJB') telah disempurnakan berkaitan ketiga-tiga unit tersebut. PJB tersebut telah disempurnakan bagi pihak responden oleh perayu. PJB tersebut mengakui, antara lain, bahawa 10% deposit telah dibayar oleh Samula kepada responden. Samula kemudian telah menyerahhak semua hak-hak dan kepentingannya dalam kedua-dua PJB tersebut kepada dua institusi kewangan. Ini dilakukan menerusi dua surat ikatan serahhak. Pengakuan dan persetujuan responden telah diperoleh melalui pengindorsan perayu. Pengindorsan tersebut telah mengesahkan, antara lain, bahawa harga belian untuk ketiga-tiga unit tersebut telah dibayar dengan penuh. Perayu kemudian telah diheret di hadapan satu siasatan domestik untuk menjawab kepada dua pertuduhan kecuaian melampau. Kecuaian melampau itu berkaitan gambaran yang salah dalam dua surat ikatan serahhak yang menyatakan bahawa harga untuk ketiga-tiga unit tersebut telahpun dibayar sepenuhnya walhal itu bukan keadaannya. Perayu telah mengakui kepada perbuatan cuai tersebut tetapi menegaskan bahawa beliau hanya menjalankan arahan sah pegawai atasannya, Simon Chong ('Chong'), Pengarah Eksekutif responden. Perayu menegaskan bahawa beliau telah mengindors dan menandatangani dua surat

ikatan serahhak tersebut atas arahan Chong, yang meyakinkannya bahawa semuanya teratur dan bahawa beliau, Chong, akan bertanggungjawab mengambil harga belian hartanah-hartanah yang dijual. Bahkan sebelum beliau menandatangani perjanjian pertama jualbeli itu, perayu telah bertanyakan tentang bayaran 10% deposit dan beliau telah diyakinkan oleh Chong bahawa beliau, Chong, akan memberinya satu nota jaminan untuk mengurangkan rasa bimbangnya. Nota jaminan itu hanya disediakan oleh Chong pada masa penyempurnaan perjanjian jualbeli kedua itu. Perayu bagaimanapun didapati bersalah terhadap kedua-dua pertuduhan dan dipecat daripada pekerjaan responden. Perayu telah memulakan satu tindakan di Mahkamah Perusahaan yang membuat keputusan menyebelahinya dan memutuskan pemecatannya adalah tanpa sebab atau alasan yang adil. Responden telah membatalkan award di Mahkamah Tinggi, yang mana keputusan itu telah dikekalkan oleh Mahkamah Rayuan. Perayu telah mendapatkan kebenaran untuk merayu ke Mahkamah Persekutuan.

**Diputuskan**, membenarkan rayuan dengan kos:

(1) Dalam kes ini, pengetahuan bersalah perlu wujud bukan pada masa apabila perjanjian-perjanjian jualbeli itu disempurnakan tetapi pada masa apabila suratikatan-suratikatan tersebut diindorskan kerana pertuduhan-pertuduhan terhadap perayu berkaitan dua suratikatan tersebut (lihat perenggan 24). Namun, apabila meneliti keterangan berhubung keadaan minda perayu pada masa berkaitan, Mahkamah Tinggi kelihatan seperti telah tersilap tafsir fakta-fakta dan terkeliru dengan kejadian tersebut sehingga memutuskan bahawa apabila beliau menyempurnakan dua suratikatan serahhak itu, perayu 'knew that he was doing wrong'(lihat perenggan 25). Memandangkan fakta yang disebutkan oleh Mahkamah Tinggi tiada pada masa pengindorsan tersebut tetapi masih mengaitkan dengan dua suratikatan tersebut, Mahkamah Tinggi tiba kepada satu kesimpulan yang menyebabkan penemuan Mahkamah Perusahaan itu diketepikan (lihat perenggan 28).

(2) Mahkamah Rayuan dalam menerima keputusan Mahkamah Tinggi telah membuat kesilapan yang sama oleh Mahkamah Tinggi. Mahkamah Rayuan secara tidak langsung menyebut tentang penemuan berdasarkan fakta yang berlaku sebelum pengindorsan suratikatan serahhak tersebut untuk memutuskan bahawa perayu mempunyai pengetahuan bersalah pada masa kedua-dua suratikatan serahhak tersebut diindorskan (lihat perenggan 29).

(3) Di Malaysia, rukun am yang mengawal doktrin arahan pihak atasan tidak lebih daripada satu kewajipan untuk menurut arahan yang diharapkan daripada seorang pekerja. Kewajipan tersirat yang paling penting daripada seorang pekerja adalah untuk mematuhi arahan majikannya (lihat perenggan 31); *Laws v London Chronicle (Indicator Newspapers) Ltd* [1959] 2 All ER 285 diikut.

(4) Kewajipan pekerja untuk mematuhi adalah terbatas kepada semua arahan sah dan munasabah majikannya berkaitan pelaksanaan fungsi sedemikian yang terangkum dalam skop kontrak pekerjaannya. Sama ada arahan majikan itu sah dan munasabah itu bergantung kepada terma-terma dan syarat-syarat kontrak dan sifat pekerjaan itu. Majikan tidak boleh memberi suatu arahan di luar skop sebenar pekerjaan (lihat perenggan 32).

(5) Kewajipan mematuhi arahan terbatas kepada kepatuhan dengan arahan yang sah dan munasabah seorang majikan dan oleh itu konsep suatu arahan itu adalah salah tidak merupakan sebahagian daripada doktrin arahan pihak atasan. Dalam kes semasa, Mahkamah Rayuan terkhilaf apabila ia membuat pengecualian kepada rukun am berhubung arahan pihak atasan apabila menyatakan bahawa seorang pekerja itu berhak untuk tidak mematuhi arahan pegawai atasannya jika beliau, pekerja itu sedar bahawa arahan sedemikian adalah salah. Pengecualian tersebut digunakan dalam undang-undang tentera atau jenayah (lihat perenggan 36).

(6) Kewajipan seorang pekerja dalam common law juga sama di mana beliau perlu mematuhi semua arahan sah dan munasabah yang diberikan oleh majikannya berkaitan pelaksanaan fungsi sedemikian dalam skop pekerjaannya. Kewajipan tersebut merupakan tanggungjawab penting yang dianggap secara tersirat dilaksanakan dalam setiap kontrak upahan. Kewajipan untuk mematuhi arahan dalam common law tertakluk kepada dua kelayakan, pertamanya di mana majikan itu tidak boleh mengarahkan pekerjanya membuat suatu yang menyalahi undang-undang atau keduanya mengarahkan pekerjanya membuat suatu yang berbahaya (lihat perenggan 37).

(7) Di mana seorang pekerja itu dikehendaki mematuhi satu arahan dan beliau ragu-ragu sama ada arahan itu sah atau tidak, cara yang betul adalah untuk mematuhi arahan itu dahulu dan kemudian mencabar kesahannya dalam prosiding yang berasingan. Perbezaan ini dibuat berdasarkan bahawa jika undang-undang membenarkan pekerja untuk tidak mematuhi apa-apa arahan yang difikirkannya tidak sah, maka adalah mustahil untuk pengurusan mengekalkan displin dan keharmonian perusahaan. Sebaliknya, jika pekerja itu dengan sendiri tidak mematuhi arahan itu yang difikirkannya menyalahi undang-undang dan tidak munasabah dua jalan terbuka untuknya. Beliau boleh menyuarakan kesukarannya itu, jika ada, kepada pegawai atasan dan jika pegawai atasannya berkeras agar arahan itu dilaksanakan, beliau boleh melakukan kerja itu dan membawa perkara tersebut dalam prosiding seterusnya terhadap majikannya atau mengadu kepada persatuannya. Jika beliau tidak mematuhinya, beliau harus mengambil risiko jika mahkamah mendapati arahan itu adalah sah dan munasabah (lihat perenggan 38).]

**Notes**

For cases on dismissal, see 8(1) *Mallal's Digest* (4th Ed, 2003 Reissue) paras 849–873. For cases on employees, see 8(1) *Mallal's Digest* (4th Ed, 2003 Reissue) paras 879–882.

**Cases referred to**

*C Paranthaman v Sime Darby Berhad (Sime Darby Plantation)* [1994] 4 CLJ 532 (refd)
*Laws v London Chronicle (Indicator Newspapers) Ltd* [1959] 2 All ER 285 (folld)
*Menon v The Brooklands (Selangor) Rubber Co Ltd* [1968] 1 MLJ 15 (refd)
*Menon v The Brooklands (Selangor) Rubber Co Ltd* [1968] 2 MLJ 186 (refd)
*Oasis Milk Bar v Lim Teng & Ors* [1962] MLJ 306 (refd)
*PP v Tengku Mahmood Iskandar* [1973] 1 MLJ 128 (refd)
*Pan Global Textiles Berhad, Pulau Pinang v Ang Beng Teik* [2002] 2 MLJ 27 (refd)

*Vasudevan Pillai & Anor v City Council of Singapore* [1965] 2 MLJ 51 (refd)
*Yong Yoke Sung & Ors v Sungai Way Estate* [1966] 1 MLJ 175 (refd)

**Appeal from**: Civil Appeal No W–04–3 of 1998 (Court of Appeal, Kuala Lumpur)

*Dato' Dr Cyrus Das (Wang Kuo Shing with him) (Wang Kuo Shing & Co) for the appellant.*
*Vijayan Verogopal (Shearn Delamore & Co) for the respondent.*

**Siti Norma Yaakob FCJ (delivering judgment of the court):**

**[1]** Proceedings were first commenced by the appellant in the Industrial Court, where he claimed that he had been wrongly dismissed by his employer, the respondent, without just cause or excuse.

**[2]** The appellant had worked for the respondent since early 1977, as a Management Trainee and on 27 October 1987, whilst he held the position as its General Manager, he was suspended from his duties pending a domestic inquiry into allegations of gross negligence and misconduct.

**[3]** At the domestic inquiry that was conducted on 5 January 1988, the appellant had to answer to two charges of gross negligence and the acts complained of relate to:

> (1) your endorsement in a deed of assignment dated 20 December 1985, and executed by Sa-Mula Jadi Sdn Bhd. in favour of Arab Malaysian Finance Bhd. in respect of SG-001. In the endorsement you stated that the whole of the purchase price of RM2,722,500 payable by Sa-Mula Jadi had been paid in full on that date when in fact this was not the case.
>
> your endorsement in a deed of assignment dated 25 April 1986, and executed by Sa-Mula Jadi Sdn Bhd in favour of Asia Commercial Finance (M) Bhd in relation to Basement 001 and Basement Disco. In the endorsement you stated that the whole of the purchase price of RM3,800,000 payable by Sa-Mula Jadi had been paid in full on that date when in fact this was not the case.

**[4]** The appellant admitted to the acts of negligence but contended that he was merely carrying out the lawful orders of his superior, one Simon Chong ('Chong'), the respondent's Executive Director. However his defence did not get him anywhere as he was found guilty of both charges and on 12 February 1988, the respondent dismissed him from its employment.

**[5]** The appellant questioned his dismissal in the Industrial Court and in Award No 179 of 1993, dated 16 June 1993, that court ruled in his favour and held his dismissal to be without just cause or excuse. The appellant was awarded compensation in lieu of reinstatement, back wages and payments in respect of leave due and not taken, to be paid to him within one month of the date of the award. A stay on the award was granted pending further proceedings in the High Court.

**[6]** Those further proceedings were by way of Originating Motion No R1–25–87 of 1993 filed by the respondent to have the award quashed and the High Court allowed its motion on 29 December 1997, quashed the award by way of certiorari and also awarded costs to the respondent.

**[7]** The appellant took the matter further to the Court of Appeal, which confirmed the High Court's findings on 20 November 2003, and the appellant then filed an application for leave to appeal to this court. Leave was granted to him on 18 February 2004, to refer the following two questions of law:

(1) whether the law on obedience to superior orders in the context of employment law in Malaysia is any way different from that at common law;

(2) whether the principle of an order being 'manifestly wrong' has any part in the doctrine of superior orders.

**[8]** Before directing our minds to the two questions, it is pertinent that we set out the circumstances surrounding the execution of the documents leading to the allegations and findings of gross negligence on the part of the appellant.

**[9]** In May 1985, the respondent successfully negotiated the sale of three parcels of business premises in Sungei Wang Plaza, a commercial complex, to a company called Sa-Mula Jadi Sdn Bhd ('Sa-Mula'). Two sale and purchase agreements were executed in respect of the three parcels, the first to cover the two basement units, namely Basement 001 and Basement Disco, and the second to cover the ground floor unit, Lot SG-001.

**[10]** In the first sale and purchase agreement dated 31 May 1985, Sa-Mula agreed to purchase the basement units for RM3.8m, the 10% deposit of which had been acknowledged by the respondent as having been paid by Sa-Mula with Sa-Mula undertaking to pay the balance of the purchase price in two instalments, RM1.52m within three months of the date of the agreement and RM1.9m within six months of the date of the agreement. The appellant signed this first sale and purchase agreement on behalf of the respondent.

**[11]** As for Lot SG-001, the purchase price was agreed at RM2,722,500 and this is reflected in the second sale and purchase agreement dated 11 June 1985, which was also executed by the appellant on behalf of the respondent. The other terms of the second sale and purchase agreement acknowledge receipt by the respondent of the 10% deposit made by Sa-Mula and the latter's undertaking to settle the balance of the purchase price within 14 days of the date of the agreement, ie by 25 June 1985.

**[12]** However six months after the execution of the second sale and purchase agreement, Sa-Mula assigned all its rights and interests under that agreement to Arab-Malaysian Finance Bhd ('AMFB') to secure loans made by AMFB to a third party. For this transaction, Sa-Mula also obtained the respondent's consent as evidenced by an endorsement made by the appellant on behalf of the respondent in a document titled 'Consents And Undertakings By The Vendor'. In endorsing the respondent's consent to the assignment, the appellant made a number of

confirmations, one of which was that the purchase price for Lot SG-001 had been settled in full by Sa-Mula as at 20 December 1985, the date of assignment when in fact that was not the true picture. A

**[13]** Sa-Mula also executed a second deed of assignment assigning all its rights and interests in the first sale and purchase agreement to Asia Commercial Finance (M) Bhd ('ACF') to secure a loan made by ACF to a third party. The second deed of assignment is dated 25 April 1986 and an acknowledgement and consent to the assignment which formed part of the assignment is endorsed by the appellant on behalf of the respondent confirming that as at 25 April 1986, the purchase price for the basement units had been fully settled. This confirmation as well as the 10% deposit acknowledged as having been paid by Sa-Mula in the first sale and purchase agreement had never been received by the respondent. B C

**[14]** The gross negligence and misconduct that the appellant had been found guilty of relate to the misrepresentations in the two deeds of assignment which state that the price for all the three parcels of property had been fully paid when in fact that was not so. D

**[15]** The appellant's defence throughout all the proceedings had been that he had endorsed and signed the two deeds of assignment on the instructions of Chong, who had assured him that everything was in order and that he, Chong, would take the responsibility of collecting the purchase price of the properties sold. In fact even before he signed the first sale and purchase agreement, the appellant had inquired about the payment of the 10% deposit and he was assured by Chong that he, Chong, would issue him with a comfort note to allay his fears. That comfort note was only prepared by Chong at the time of the execution of the second sale and purchase agreement. E F

**[16]** Before us, the decision of the Court of Appeal was attacked on the grounds that it had erred in its appreciation of both the facts and the law. G

**[17]** The first issue that was raised relate to the finding that the appellant knew of the misrepresentations appearing in the two deeds of assignment. It was argued that reliance by the Court of Appeal on the same finding made by the High Court was misplaced as the High Court had confused the facts surrounding the executions of the two sale and purchase agreements with that surrounding the executions of the deeds of assignment. H

**[18]** The only payments acknowledged by the two sale and purchase agreements as having been received by the respondent from Sa-Mula were the 10% deposits of the purchase prices of the two basement units, the subject matter of the first sale and purchase agreement, and the ground floor unit the subject matter of the second sale and purchase agreement. I

**[19]** The appellant's testimony on the deposits was that before he executed the two sale and purchase agreements, he had inquired from Chong whether the deposits had

A been paid. Chong had assured him that he, Chong, would collect all the monies due under the agreements and that he was also prepared to issue a comfort note to the appellant, which he did at the time the second sale and purchase agreement was signed. Chong was not called to testify and on the unchallenged evidence of the appellant, the Industrial Court made the following finding of fact:

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> It is clear beyond all reasonable doubts upon a consideration of the evidence that the two SPA Agreements were signed with Simon Chong's confident assurance that all monies will be collected by him and further his instruction was not merely oral but supported in the form of a Note, to induce the Claimant to sign the SPA's without any anxiety whatsoever. It is unequivocally clear that the Claimant signed the two SPA's not only because he was
C authorized and instructed to do so but under the conviction that the transaction was above board.

**[20]** In summary, the Industrial Court made a finding that at the time when he executed the two sale and purchase agreements, the appellant was aware that the
D respondent had not received the 10% deposits from Sa-Mula, but all the same, he signed the agreements on the assurance given by Chong that the 10% deposits would be collected.

**[21]** However a different situation arose when the appellant was instructed by
E Chong to sign the two deeds of assignment. On each occasion, the appellant inquired whether all monies had been paid and he was assured by Chong that everything was in order and it was proper for him to sign the two deeds. From this evidence, the Industrial Court arrived at the following conclusion:

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> It is crystal clear and transparent that the Claimant endorsed the two DOA's only because of the directives from Simon Chong to endorse the said documents, only because Simon Chong accepted full responsibility and accountability for the monies that were due to the company only and only because Simon Chong had given the Claimant a confirmation and full assurance that everything would be in order to sign the two SPA's and the DOA's.

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**[22]** Under these circumstances, the Industrial Court concluded that the appellant was innocent of any wrongdoing but had acted on the representations made by his superior. To that extent, it cannot be said that the appellant knew that the deeds contain misrepresentations.

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**[23]** In this case, it must be established that the guilty knowledge must be present not at the time when the sale and purchase agreements were executed but at the time when the deeds were endorsed as the charges against the appellant relate to the two deeds.

I

**[24]** When reviewing the evidence of the appellant's state of mind at the relevant times, the High Court appeared to have misread the facts and confuse the events by concluding that when he executed the two deeds of assignment, the appellant 'knew that he was doing wrong'. This is seen from the judgment which is expressed in the following manner:

In this case, there was no shred of evidence that in giving the orders, force or coercion had been applied against the will of the first Respondent to commit the wrongful act of making false endorsements on the two deeds of assignment.

**[25]** The judgment goes further to express the following:

In fact from the evidence, the first respondent knew that what he was doing was wrong, but the risk he took was from his mistaken belief upon the assurance given by Simon that he would be responsible to ensure that all moneys would be collected. Before the endorsements, it was he who pointed it to Simon of the irregularity in the documents but upon the assurance given followed by a written note to that fact by Simon he committed the act.

**[26]** The first respondent referred to in the judgment is the appellant.

**[27]** From the above passages, it would appear that the High Court linked the assurance given by Chong to be responsible for collecting all monies due, to have been made by him at the time of the endorsements of the two deeds. This is not correct. That assurance was given at the time the two sale and purchase agreements were signed. This mistaken belief is again reflected when mention is made to the 'irregularities in the documents' and coupled with the reference to 'a written note', all of which indicate to events that were present at the time when the sale of purchase agreements were signed. It must be remembered no written or comfort note was issued at the time of the assignments. Since the facts alluded to by the High Court were not present at the time of the endorsements but nevertheless associated with the two deeds, the High Court reached a conclusion which resulted in the findings of the Industrial Court being set aside.

**[28]** The Court of Appeal accepted the conclusion of the High Court and in so doing made the same error as the High Court. This is borne out by the statement of the Court of Appeal that although the appellant 'knew of the true position of the transactions at the material time, he went on to endorse the deeds on the assurance given by his superior Mr Simon Chong'. This statement cannot be right as the court was alluding to findings based on facts that happened prior to the endorsements of the deeds of assignment to arrive at the conclusion that the appellant had the guilty knowledge at the time the two deeds were endorsed. This conclusion we say is erroneous as the guilty mind that requires to be established must be the guilty mind present at the time of the endorsements of the deeds and not at the time of executions of the two sale and purchase agreements. As I have indicated above, at the time of the endorsements, the Industrial Court had concluded that the appellant was not aware that the purchase price of the properties had been paid in full, a finding of fact, which we are not about to disagree as the evidence support such a finding and we see nothing perverse about it to warrant reversing it. Moreover, the appellant's conduct in confronting Chong after he discovered that the deeds contain misrepresentations is consistent with the conduct of a man who did not know that he had committed a wrong.

**[29]** The other issue taken before us was whether the Court of Appeal was correct when it held that the general rule on superior orders does not apply to an employee who is conscious that an order given to him is manifestly wrong.

**[30]** In Malaysia, the general rule governing the doctrine of superior orders is nothing more than the duty of obedience that is expected of an employee. The most fundamental implied duty of an employee is to obey his employer's orders. The classic modern statement of that duty is found in the judgment of Lord Eversherd MR in *Laws v London Chronicle (Indicator Newspapers) Ltd* [1959] 2 All ER 285 to be as follows:

> It is, no doubt, therefore, generally true that wilful disobedience of an order will justify summary dismissal, since wilful disobedience of a lawful and reasonable order shows a disregard — a complete disregard — of a condition essential to the contract of service namely the condition that the servant must obey the proper orders of the master and that, unless he does so, the relationship is, so to speak, struck at fundamentally.

**[31]** Working as instructed is the employee's basic consideration under a contract of employment just as providing remuneration is the basic consideration of his employer. However the employee's duty to comply is confined to all the lawful and reasonable orders of his employer in respect of the performance of such functions that falls within the scope of his contract of employment. Whether the employer's orders are lawful and reasonable would depend very much on the terms and conditions of the contract and the character of employment. The term 'lawful and reasonable order' is often used to describe the order given and in this context it means primarily an order which is reasonably within the ambit of the employment in question so that, in any given dispute much or all will depend on the terms of the individual contract of employment. The employer thus cannot give an order outside the proper scope of the employment.

**[32]** One of the earliest cases dealing with the question of lawful and reasonable orders can be found in *Menon v The Brooklands (Selangor) Rubber Co Ltd* [1968] 1 MLJ 15 where Raja Azlan J (as he then was) had to deal with the issue of the plaintiff's refusal to acknowledge receipt of a warning letter on a copy. The refusal was reported to the manager, who then directed the assistant manager to write to the plaintiff a letter instructing him to see the manager personally. This was done but the plaintiff refused to comply with such direction. The plaintiff was found guilty of misconduct in his employment in that he disobeyed the lawful and reasonable order of the defendants. The footnote on the case had the following holding:

> Held: the refusal to acknowledge receipt of warning letter justified instant dismissal since it goes to the essential conditions of his contract of service which requires that he be a diligent and responsible estate conductor. The conduct was inconsistent with his duty towards the master. It was inconsistent with the continued confidence between them essential to the relationship of master and servant.

**[33]** Further on appeal to the Federal Court in *Menon v The Brooklands (Selangor) Rubber Co Ltd* [1968] 2 MLJ 186, Pike CJ, in dismissing the appeal had this to say:

This, in addition to the contumacious manner in which he refused to obey instruction to see the manager of the estate, went far beyond a mere isolated act of disobedience of a lawful order. It challenged and rejected the whole fabrics of the relationship of employer and effectively destroyed the trust which must subsist in any such relationship where the employee holds a responsible position.

**[34]** That same principle of law was followed in *Oasis Milk Bar v Lim Teng & Ors* [1962] MLJ 306, *Vasudevan Pillai & Anor v City Council of Singapore* [1965] 2 MLJ 51, *Yong Yoke Sung & Ors v Sungai Way Estate* [1966] 1 MLJ 175 and *C Paranthaman v Sime Darby Berhad (Sime Darby Plantation)* [1994] 4 CLJ 532.

**[35]** From the case law, it is clear that the duty of obedience is confined to compliance with the lawful and reasonable orders of an employer and as such the concept of an order being manifestly wrong has no part in the doctrine of superior orders. To that extent, the Court of Appeal erred when it made an exception to the general rule on superior orders when stating that an employee is entitled to disobey the orders of his superior if he, the employee is aware that that such orders are manifestly wrong. However, that exception holds good in military or criminal law as seen from the case of *Public Prosecutor v Tengku Mahmood Iskandar* [1973] 1 MLJ 128 where it was held that 'a soldier is not protected where the order is grossly illegal'.

**[36]** The duty of an employee at common law is also similar in that he is to comply with all lawful and reasonable orders given by his employer with respect to the performance of such functions within the scope of his employment. That duty is one of the fundamental obligations which are deemed to be impliedly undertaken in every contract of hiring. The duty of obedience at common law is subject to two qualifications, firstly that the employer may not order his employee to do something illegal or secondly order his employee to do anything dangerous.

**[37]** However, it may well be that an employee is caught in the situation that he is required to obey an order and he is doubtful whether the order is legal or not. Under those circumstances, the proper course is for the employee to obey the order first and to challenge its legality in separate proceedings. This distinction is made on the basis that if the law allows the employee to disobey any order he thinks is not legal, it would be impossible for the management to maintain discipline and industrial peace. On the other hand, if the employee takes upon himself to disobey the order which he thinks to be unlawful and unreasonable two courses are open to him. He can point out his difficulties, if any, to the superior and if the latter insists on the order being carried out, he can do the work and take the matter further in proceedings against his employer or to complain to his union. If he disobeys, he must take the risk if the court finds the order to be lawful and reasonable. See the case of *Pan Global Textiles Berhad, Pulau Pinang v Ang Beng Teik* [2002] 2 MLJ 27.

**[38]** For the reasons that we give in this judgment we answer both questions posed to us in the negative.

**[39]** As we accept the findings of fact made by the Industrial Court and we see nothing perverse in their application to the relevant employment laws, we allow this

A appeal with costs here as well as costs in the High Court and Court of Appeal, set aside the orders of the Court of Appeal dated 20 November 2003 and restore Award No 179 of 1993 dated 16 June 1993. The deposit made in this appeal is to be refunded to the appellant.

B **[40]** My learned brothers, Abdul Malek Ahmad PCA and Alauddin FCJ, who have had sight of this judgment in draft concur with the reasons given and the conclusions reached.

*Appeal allowed with costs.*

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Reported by John Paul Simon

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